A **TAI CHOI YU & CO, ADVOCATES v. TING SIE CHUNG (NO. 3)**

HIGH COURT SABAH & SARAWAK, MIRI
STEPHEN CHUNG J
[SUIT NO: MYY-22-15-7-2013]
26 JUNE 2014

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CIVIL PROCEDURE: *Amendment – Writ and statement of claim – Application for – Claim for legal professional fees and services rendered – Amendment to vary interest rate from 8% to 14% per annum – Whether amendment misconceived and an abuse of process of court – Whether amendment changed nature of suit – Rules of Court 2012, O. 20 r. 3 – Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors*

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The plaintiff's claim against the defendant was in relation to payment for professional legal services and works rendered. The plaintiff filed an application under O. 20 r. 3 of the Rules of Court 2012 to amend the endorsement and the interest rate from 8% to 14% per annum in an amended writ and statement of claim. The plaintiff contended that the application was made, *inter alia*, (i) to abide by the provisions of the Advocates Ordinance of Sarawak and the Advocates' Remuneration Rules 1988 of Sarawak; and (ii) to reflect the interest of 14% per annum on the disbursements and professional legal fees chargeable and payable to the plaintiff pursuant to r. 6 of the Advocates' Remuneration Rules 1988. The defendant, however, argued that the plaintiff's application was misconceived and an abuse of the process of the court since pleadings had been closed. Further, it was submitted, *inter alia*, that (i) r. 6 of the Advocates' Remuneration Rules 1988 was not applicable to contentious business, counsel's fees in attending court cases, disbursement fees, etc; and (ii) the proposed amendment, if allowed, would change the true character of the dispute.

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Held (allowing plaintiff's application with costs in the cause):

(1) The general principle guiding the court in granting amendments is to allow such amendments where (a) there is *bona fides* on the part of the applicant; (b) the amendments caused no prejudice to the other side which cannot be compensated by costs; and (c) they are not such as to turn a suit of one character into a suit of another and inconsistent character. (para 8)

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(2) The court shall have regard to the overriding interest of justice and not only to the technical non-compliance with the Rules. No application was made to amend the substantive claim against the defendant. The application to amend the interest on the sum claimed was merely to vary the interest and did not turn the suit of one character into a suit of another and inconsistent character. The application for amendment would enable the questions in controversy between the parties to be decided and was not a tactical manoeuvre. It was also not intended to embarrass the defendant. (paras 10 & 11)

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Case(s) referred to:
Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors [1983] 1 CLJ 191; [1983] CLJ (Rep) 428 FC ***(refd)***

Legislation referred to:
Advocates' Remuneration Rules 1988 of Sarawak, rr. 2(1), 6
Rules of Court 2012, O. 20 r. 3

For the plaintiff - Tai Choi Yu; M/s Tai Choi Yu & Co, Advocs
For the defendant - Henry Ling (Paul Liong with him); M/s Ting & Ting, Advocs

Reported by Kumitha Abd Majid

JUDGMENT

Stephen Chung J:

[1] The plaintiff filed an application to amend the endorsement and the interest rate from 8% to 14% in the amended writ and statement of claim set out in the proposed re-amended writ and statement of claim which are underlined in green attached to the application and marked "A".

[2] The grounds of the application are:

(i) to abide by the provisions of the Advocates Ordinance of Sarawak and the Advocates Remuneration Rules 1988 made thereunder;

(ii) to reflect the interest of 14% per annum on the disbursements and professional legal fees chargeable and payable to the plaintiff pursuant to r. 6 of the Advocates' Remuneration Rules 1988 of Sarawak; and

(iii) such other grounds as stated in the affidavit in support.

[3] The plaintiff's amendment applied for is to amend the interest rate from 8% per annum to 14% per annum pursuant to the Advocates Ordinance of Sarawak. The plaintiff submitted that the proposed amendment does not change the nature of the suit in any way and that the amendment does not change the cause of action on the plaintiff's claim for legal professional fees and services rendered. The plaintiff submitted that the defendant is not prejudiced by the proposed amendment which can be compensated by costs.

[4] The plaintiff submitted that the suit has yet to be heard and to be decided by the court and that the defendant can still submit on the matter of the interest rate under the Advocates Ordinance of Sarawak at the hearing of the suit.

[5] The defendant submitted that the application made under O. 20 r. 3 of the Rules of Court 2012 is misconceived and an abuse of the process of the court because the pleadings have been closed a long time ago.

[6] The defendant submitted that r. 6 of the Advocates' Remuneration Rules 1988 is not applicable to contentious business, counsel's fees in attending court cases, disbursement fees, filing fees, travelling and hotel expenses etc. The defendant submitted that r. 2(1) of the 1988 Rules provides that the scale of costs for the remuneration of an advocate in the 1988 Rules does not apply to contentious business.

[7] The defendant submitted that the proposed amendments if allowed would change the true character of the dispute. He submitted that the proposed amendments do not seek to correct any *bona fide* or genuine mistake and that on the facts and in the circumstances of the case, it would be unjust to let the plaintiff to make such an application or proceed to make such amendments.

[8] The general principle guiding the court in granting amendments is to allow such amendments where (a) there is *bona fides* on the part of the applicant; (b) the amendments cause no prejudice to the other side which cannot be compensated by costs; (c) they are not such as to turn a suit of one character into a suit of another and inconsistent character: see *Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors* [1983] 1 CLJ 191; [1983] CLJ (Rep) 428; [1983] 1 MLJ 213.

[9] In the writ and statement of claim and amended writ and statement of claim, the plaintiff prayed for interest on the sum claimed at 8% per annum. In this application, the only amendment applied for is to amend the interest rate from 8% to 14% per annum under r. 6 of the Advocates Remuneration Rules 1988 of Sarawak. There is no other amendment sought for.

[10] Reading the amended writ and statement of claim, the claim of the plaintiff against the defendant is for payment of a total sum of RM1,198,038.05 for professional legal services and works rendered and for expenses and disbursements incurred. There is no application to amend the substantive claim of the plaintiff against the defendant. The application to amend the interest on the sum claimed against the defendant is merely to vary the interest and does not turn the suit of one character into a suit of another and inconsistent character.

[11] In administrating these rules, the court shall have regard to the overriding interest of justice and not only to the technical non-compliance with the rules. Whether the plaintiff's claim for payment of the professional legal services and works rendered are contentious in nature or otherwise are issues for trial. Whether the plaintiff is entitled to 8% or 4% per annum under the Rules of the Court is an issue for trial. Whether the plaintiff is entitled to 14% or otherwise under r. 6 of the Advocates Remuneration Rules 1988 is also an issue for trial.

[12] This application for amendment will enable the questions in controversy between the parties to be decided. Further, this application for amendment is not a tactical manoeuvre and not intended to embarrass the defendant. The application to amend is allowed. Costs to be costs in the cause.

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